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Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Security Council
Sixty-second year

Identical letters dated 28 September 2007 from the Permanent Representative of Croatia to the United Nations addressed to the Secretary-General and the President of the Security Council

I would like to bring to your attention a letter from Ivo Sanader, Prime Minister of the Republic of Croatia (see annex) and to request your kind assistance in circulating it as a document of the General Assembly, under agenda item 75, and of the Security Council.

(*Signed*) Mirjana **Mladineo**
Ambassador
Permanent Representative

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Annex to the identical letters dated 28 September 2007 from the Permanent Representative of Croatia to the United Nations addressed to the Secretary-General and the President of the Security Council

It was with profound disappointment and astonishment that I learned about the Judgment of the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) delivered on 27 September 2007. The sentences for former senior officers of the Yugoslav People's Army (JNA) for the war crimes committed in the Republic of Croatia in 1991 — Mile Mrkšić to 20 years' imprisonment, Veselin Šljivančanin to 5 years' imprisonment and acquittal for the third accused, Miroslav Radić — stand in blatant disparity with the historical facts surrounding their misconduct.

The Republic of Croatia cannot remain silent while justice is ignored by the very institution established to serve it. The main goal of ICTY is to provide justice and ease the pain in the souls of those who have suffered so much and are now trying to find solace after all the hardship they have gone through. Therefore, impartiality, fairness and absence of any prejudice must be the guiding principles of ICTY and the bedrock of every verdict. Yesterday, unfortunately, this was not the case.

Vukovar and Ovčara are places where the worst war crimes in the territory of the Republic of Croatia were committed during the Homeland War, and along with Srebrenica and Sarajevo they are internationally recognized symbols of the war and destruction brought upon the innocent victims of the Milošević regime's aggression. In Ovčara, on 20 November 1991, after the brutal siege of Vukovar by the JNA and Serb paramilitary forces, 264 patients from the Vukovar Hospital were tortured and killed in cold blood. For Croatia, Ovčara stands as the icon of our struggle and suffering, a place of deep sorrow but also one of sublime pride and eternal remembrance. No Croatian Government shall ever allow Ovčara's memory to be stained and disrespected. With a heavy heart I have to state that the above-mentioned ICTY judgement is doing precisely that.

At the time of the crime, Mile Mrkšić was a Colonel in the JNA and commander of all Serb forces, including JNA, in the Vukovar theatre of war; Veselin Šljivančanin was a Major in the JNA and head of the JNA security organ and was thus empowered to select people for execution from among the captured and wounded in Vukovar; Miroslav Radić was a JNA Captain and commander of the company that took part in the occupation of Vukovar Hospital. All three were charged with crimes against humanity and war crimes for their alleged participation in a joint criminal enterprise whose goal was to mistreat and murder patients from the Vukovar Hospital. All the events that took place during the siege of Vukovar and in Ovčara are well documented and known to ICTY and United Nations Member States. I would just like to recall that the first written evidence on the Ovčara war crimes was submitted to the Security Council as early as 27 May 1994 in the final report of the Commission of Experts established pursuant to Security Council resolution 780 (1992), annexed to the letter addressed to the President of the Security Council (S/1994/674). Since then, numerous additional facts regarding this heinous crime have been collected and submitted to the Tribunal, more than sufficient to provide for an appropriate judgement.

I will not elaborate upon the legal inconsistencies of this shameful verdict, but rather leave this to the appeal process that shall follow. Instead, I want to emphasize that the Republic of Croatia was one of the founders of ICTY and a firm supporter of United Nations Security Council resolutions 808 (1993) and 827 (1993), through which the Tribunal was established for "the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia". Today I cannot but openly question whether this sole purpose has been well served.

From the very beginning Croatia has been supporting ICTY activities aimed at spearheading the shift from impunity to accountability, establishing the facts beyond any doubt and strengthening international law and the rule of law. In this respect, the Croatian Government has made constant efforts to encourage the work of the institution devoted to the implementation of criminal adjudication for the purpose of international fairness that shall overcome double standards and cynical political engineering. ICTY should serve as the voice of victims, protector of their dignity and healer of their wounds. Through its latest judgement, ICTY has failed to serve any of these principles, and has fallen short of all of the assigned goals.

From the first days after the establishment of the Tribunal, the Croatian Government has actively cooperated with the Chambers and the Office of the Prosecutor. In this way, Croatia has significantly helped to cast light on the events that are the subject of the indictments and the investigations. Croatia has fulfilled all its obligations towards ICTY and expects nothing less from the Tribunal in regard to when it comes to the ICTY obligation to serve justice and justice alone.

Croatia will deliver its position on the matter in detail during the upcoming debate in the General Assembly under agenda item 75 ("Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991"), as well as in the Security Council under the same agenda item. The time has come to seriously re-examine all aspects of the work of ICTY, in particular against the background of its failure to serve justice in an even, balanced and impartial way. This is of paramount importance for the future of international criminal justice.

I request that the present letter be circulated as a document of the General Assembly, under agenda item 75, and of the Security Council, and that it be urgently brought to the attention of the United Nations Member States.

(*Signed*) Ivo **Sanader**
President of the Government of the Republic of Croatia